Special Civil Application No 5724 of 1987

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA
1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

ANIL ENGINEERING WORKS
vs
COMPTENT AUTHORITY & DY. COLLECTOR (ULC) AND ANR.

Appearance: Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

This petition demonstrates how misconception of law results in institution of futile litigations. What is challenged in this petition is the order passed by the Competent Authority of Rajkot (respondent No.1 herein) on 28th November 1983 declaring the holding of the petitioner to be surplus to the tune of 3061.36 square meters on the basis of the nil land declaration filed by the petitioner under sec. 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief). As luck would have it, it has been affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 6th May 1987 in Appeal No. Rajkot-165 of 1983.

2. The facts giving rise to this litigation move in a narrow compass. The petitioner at the relevant time was a partnership firm having its factory in several plots of lands bearing Nos. 135 to 144 of Survey No. 43/1(part) in all admeasuring 4561.36 square meters situated at village Vavdi in Rajkot District (the disputed lands for convenience). It is the case of the petitioner that the disputed lands belonged to the partners individually. The disputed lands were not of the ownership of the petitioner partnership firm. It is also the case of the petitioner that the partnership firm was dissolved by executing a deed of dissolution on Rs. 100 stamp paper on 24th November 1975. The Act came into force with effect from 17th February 1976. According to the petitioner, the partnership firm of the petitioners stood dissolved prior thereto. It cannot be gainsaid that a dissolved firm has no existence in the eyes of law except for the purposes of the winding up process following the dissolution of the firm. Besides, according to the petitioner, it had no ownership of any land. It appears that the petitioner was advised to file its declaration in the prescribed form under sec. 6(1) of the Act. That form was duly processed by respondent No. 1. After observing all necessary formalities according to law, by his order passed on 28th November 1983 under sec. 8(4) of the Act, respondent No.1 came to the conclusion that the partnership was not dissolved and the disputed lands were owned by it. Its holding was in excess of the ceiling limit by 3061.36 square meters. Its copy is at Annexure A to this petition. The matter was carried in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-165 of 1983. By the order passed by respondent No.2 on 6th May 1987 in the aforesaid appeal, it came to be dismissed. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. It transpires from the impugned order at Annexure A to this petition that a copy of the dissolution deed was produced before respondent No.1. He did not accept the genuineness of the dissolution deed simply by saying that it is not consistent with the provisions of law. He has not chosen to explain how it is not consistent with the provisions of any law in force at the relevant time. It transpires from the appellate order at Annexure B to this petition that the dissolution of the partnership firm was not accepted only on the ground that the deed of dissolution executed on 24th November 1975 was not a registered one. It thus becomes clear that the execution of the deed or dissolution was not doubted. What was objected to was

that such dissolution of partnership was not in accordance with law.

4. It is a settled principle of law that a partnership is a compendious term for a group of partners. Partners by forming a partnership firm do not lose their individual identity, nor does their association acquire a legal entity except for certain specified purposes like the law of income tax. The continue to remain co-owners of partnership assets. On dissolution, their shares in partnership assets becomes specified. Such dissolution would certainly not involve any transfer of interest in any property including any immovable property.

5. No ruling is needed in support of the aforesaid settled principle of law. As rightly relied on by learned Advocate Shri Nanavaty for the petitioner, a reference deserves to be made to the binding ruling of the Supreme Court in the case of S.V. Chandra Pandian and others v. S.V. Sivalinga Nadar and others reported in JT 1993(1) Supreme Court 278. It has clearly been held therein that when dissolution of a partnership firm takes place and the residue is distributed among partners, there is no partition, transfer or extinguishment of interest attracting sec. 17 of the Registration Act, 1908. It thus becomes clear that dissolution of a partnership firm does not involve any transfer of interest in any property including any immovable property and the document of dissolution does not require registration under the law of registration.

6. It appears that the aforesaid binding dictum of law is lost sight of by both the authorities below. It appears that respondent No.1 was obsessed with the idea that on dissolution transfer of the disputed lands take place and, since it was within the period specified in sec. 4(4)(a) of the Act, the bona fides of transaction were required to be proved by the petitioner. This conclusion reached by respondent No.1 herein is contrary to the settled legal principle in that regard as reiterated by the Supreme Court in its aforesaid binding ruling.

7. So far as respondent No.2 is concerned, it has not accepted the dissolution of the partnership firm of the petitioner only on the ground that the deed of dissolution was not registered under the law of registration. That view also runs counter to the aforesaid binding ruling of the Supreme Court.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. Since the partnership firm of the petitioner stood dissolved prior to coming into force of the Act, it could not be

said to have any property left with it. It is therefore declared that the partnership of the petitioner had no property on the date of coming into force of the Act.

9. Before parting I am unable to resist from expressing the feeling that the petitioner was not required to file any declaration under sec. 6(1) of the Act. It appears that it has done so under some misconception of law or some advice based on such misconception of law. Had the petitioner not filed the declaration under sec. 6(1) of the Act, the impugned orders might not have come to be passed at all and this Court might not have been required to examine this case.

10. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 28th November 1983 at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 6th May 1987 in Appeal No. Rajkot-165 of 1983 at Annexure B to this petition is quashed and set aside. It is hereby declared that the petitioner was not holding any land on the date of coming into force of the Act. Rule is accordingly made absolute with no order as to costs.
